



Alaska Boards and Commissions Results of the Alaska Citizen Members Survey

A Summary Report Prepared for the
Office of the Governor, Boards and Commissions

by

Kristin S. Knudsen Latta, J.D., M.J.S.

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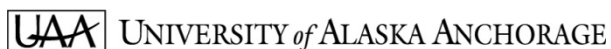
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Alaska Boards and Commissions Project Citizen Members Survey



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The Purpose of this Research

Adjudicatory boards and commissions provide an opportunity for ordinary citizens to participate in legal decision-making, usually in a field where their experience or expertise is acknowledged. Unlike a jury, which meets once as a body to make one decision outside the presence of a professional judge, boards and commissions are “mixed tribunals.” Members of boards and commissions meet more than once as a body, make more than one decision, and work with a professional administrative law judge or hearing officer. The level and method of interaction with the professional judge varies from board to board and commission to commission. However, because of this interaction between professional judge and lay member, the term “mixed tribunal” is used to describe these boards and commissions.

Mixed tribunals share some characteristics of mixed courts, which are the dominate model of court system in Northern Europe. Some European studies have suggested that the lay members of mixed courts lacked independence and were dominated by the professional judiciary. A major purpose of this research was to test some of these criticisms, as applied to mixed tribunals. The criticisms include:

- Lay members do not understand their duties.
- Lay members do not participate.
- Lay members do not care about law.
- Lay members rarely disagree with the professional administrative law judge.

Boards and commissions have recurring difficulty recruiting qualified lay members for appointment to unpaid positions. Therefore, this research asked some basic questions about the recruitment and experience of lay members of Alaska’s boards and commissions, including:

- Does lay member recruitment have an effect on member experience?
- How well-prepared are members for their duties?
- What experiences have an adverse effect on members’ relationship to the tribunal?
- What experiences have a positive effect on members’ relationship to the tribunal?

Alaska’s boards and commissions were created at different times, using different models of mixed tribunal and methods of decision making. This research was designed to accommodate such differences.

The Participants

Approximately 270 Alaskan members of 45 State boards and commissions received an invitation to participate in a survey prepared with the assistance of the Center for Research Design and Analysis (CRDA) at the University of Nevada, Reno. Only adjudicatory boards and commissions were surveyed. Survey invitations were sent at the end of September 2011. Participants could chose to use an online format by accessing an anonymous, confidential code, or respond to a 12-page paper survey mailed 25 October 2011.

- The survey research complied with Institutional Review Board requirements for human research.
- Permission to contact state board and commission members was given by the Office of the Governor, Boards and Commissions.
- All responses were confidential and anonymous.
- Response data was sent directly to the CRDA, assigned random ID numbers and identity-stripped before the researcher received the data. Paper survey responses were input by CRDA staff and merged with online survey data by the CRDA. The original data were never seen by the researcher and author.

Administrative law judges (ALJs) and lawyers who practice before boards and commissions were not included in this study. The state population of ALJs and lawyers who regularly practice before administrative agencies is so small that anonymity would be hard to maintain. There was a possibility of response bias affecting lay members and the researcher, who is known to many members of the administrative judiciary.

The survey generated a 57% response rate, which was high enough to allow valid correlations to be drawn from the data. The responding participants were

- Mostly white (93%),
- Mostly male (64.5%),
- Mostly middle-aged or older (46-60=49%, 61-70=42%),
- Usually long-time Alaskans (Median residence = 35 yrs.),
- Mostly well-educated (58% master's degree or higher), and
- Usually employed (73%).

Respondents' Geographical Distribution and Historical Experience

The survey asked about “community of residence” because the researcher wanted to be prepared for questions about urban or rural residents dominating responses. The residence question was designed to allow respondents to remain anonymous. Instead of collecting data based on the responding participant’s address, the participant was asked if he or she lived in the Municipality of Anchorage. If not, the participant was asked to state his or her “community of residence” – not an address. Respondents could state a general area instead of a specific locality.

- Responding participants were geographically distributed in fairly close relationship to state population distribution.
- Municipality of Anchorage residents (43%) responded proportionately to the Municipality’s share of Alaska’s working age population (42%).
- Rural residents accounted for 27% of respondents and 14% lived in small towns (for example, Kenai, Valdez, Palmer, Ketchikan).
- Juneau and Fairbanks residents made up 12% of responding participants. Five percent of respondents declined to state a community of residence.
- Southeast Alaska residents were slightly over-represented and residents of northern Alaska were slightly under-represented compared to the state’s population.

Asking about length of residence revealed that most respondents have lived through periods of significant social change in Alaska and most have some experience of Alaska’s historical isolation from the rest of the United States.

| Table 1: Participant Years in Alaska | | |
|--------------------------------------|-----------------|---|
| Responses | Years in Alaska | Events |
| 4.5 % | 0-10 years | 2008 Gov. Palin runs for Vice-President 2002 Mentasta earthquake |
| 16.2 % | 11-20 years | 1996 Miller’s Reach wildfire 1992 Mt. Spurr erupts three times, Anchorage Times closes |
| 20.8 % | 21-30 years | 1989 Exxon Valdez oil spill 1985 Libby Riddles wins the Iditarod 1982 First PFD payments |
| 29.2 % | 31-40 years | 1980 ANILCA passes Congress, Alaska repeals state income tax 1982 4 Alaska time zones reduced to 2 1974 Trans-Alaska Pipeline construction begins |
| 29.2 % | 41+ years | 1971 Alaska Native Claims Settlement Act passes Congress 1967 Chena River floods Fairbanks 1964 Good Friday Earthquake 1963 Yukon River Rampart Dam protests 1959 Statehood |

Respondents' Education, Tribunal Subjects, and Tribunal Models

Respondents were asked to describe their educational background by choosing from general categories. The educational level choices included formal vocational equivalencies. About a fourth of respondents (24.5%) had completed a formal union apprenticeship or a bachelor's degree, a third (32.9%) had a master's degree, professional license (PA-C, CPA, etc.), or a master craftsman designation; and 23.9% had a doctorate (Ph.D., M.D., etc.) degree. By comparison, roughly 5.6% of Alaska's adult population has a master's degree and 2.4% has a doctorate or professional degree.^a

No record was kept of the respondents' membership in specific tribunals. Instead, participants were asked to describe the general type or subject of dispute that their tribunal decided by choosing from broad general categories. A large number chose "Other," perhaps to preserve anonymity.

| Table 2. Type of Disputes Respondents' Tribunals Decide | Responses |
|--|------------------|
| Individual disputes related to work: occupational, professional or guiding licenses, practices, or violations; individual commercial fishing permits; benefit or monetary claims like workers' compensation, disability, retirement, medical benefits or individual employment rights. | 48.1 % |
| Use of public resources: land and natural resources, including oil and gas or mining; taxes, and tariffs; boundaries; land use; non-commercial hunting or fishing; or environmental enforcement. | 8.3 % |
| Public regulation: labor relations, labor standards and safety, employment discrimination, human rights, and public offices and officials; elections; public utilities; commercial activity, insurance, corporations, banks or businesses. | 21.2 % |
| Cases about conduct, activity, or rights not listed above. | 22.4 % |

Because an important part of this research was to test whether certain types of mixed tribunals were associated with variances in participation, participants were asked to choose the "best fit" from broad descriptions of different models of decision-making, ranging from a model where the professional judge deliberates with the lay members and votes to a model where the lay members review the professional judge's written proposed decision without further participation by the professional judge (ALJ). The results did not support the hypothesis that tribunals with greater ALJ involvement in

^a American Community Survey, 2007-2011 Data for Alaska, available at State of Alaska, Department of Labor and Workforce Development, Division of Research and Analysis, at <http://live.laborstats.alaska.gov/cen/acsdetails.cfm?l=1&ay=20115&an=Alaska&ds=01&ds=14#B15001>.

deliberation would have lower participation and disagreement rates. The distribution of respondents is shown in Table 3.

| Table 3. Respondents' Tribunal Decision-Making Models Best fit for "how your board or commission works to decide cases" | Responses |
|--|------------------|
| Shared Hearing + Conference Deliberation. Lay members and an A.L.J. (or qualified member) hear the case, deliberate and decide the outcome together. The A.L.J. and citizen members each have one vote. Usually the A.L.J. writes the decision. | 29.3 % |
| Shared Hearing + Advisory Deliberation. Lay members attend the hearing with an A.L.J. who presides over the hearing. In deliberation, the A.L.J. remains in the room to advise the tribunal members, but does not vote. The A.L.J. writes the decision. | 12.9 % |
| Delegated Hearing + Advisory Deliberation. An A.L.J. conducts a hearing for the tribunal. Before a proposed decision is written, the A.L.J. meets with the tribunal members while they discuss the evidence. The members make a decision. The A.L.J. does not vote. The ALJ writes the final decision. | 10.9 % |
| Delegated Hearing + Collaborative Deliberation. The A.L.J. conducts a hearing for the tribunal, prepares a draft proposed decision, and meets with the tribunal while members discuss the evidence and the draft decision. The A.L.J. does not vote. | 25.9 % |
| Delegated Hearing + Tribunal Review. An A.L.J. hears the case and writes a proposed decision. Members of the tribunal review the proposed decision without the presence, collaboration or advice of the A.L.J. The tribunal may adopt, amend, or reject the proposed decision. | 21.1 % |

Respondents' Understanding of Member Duties

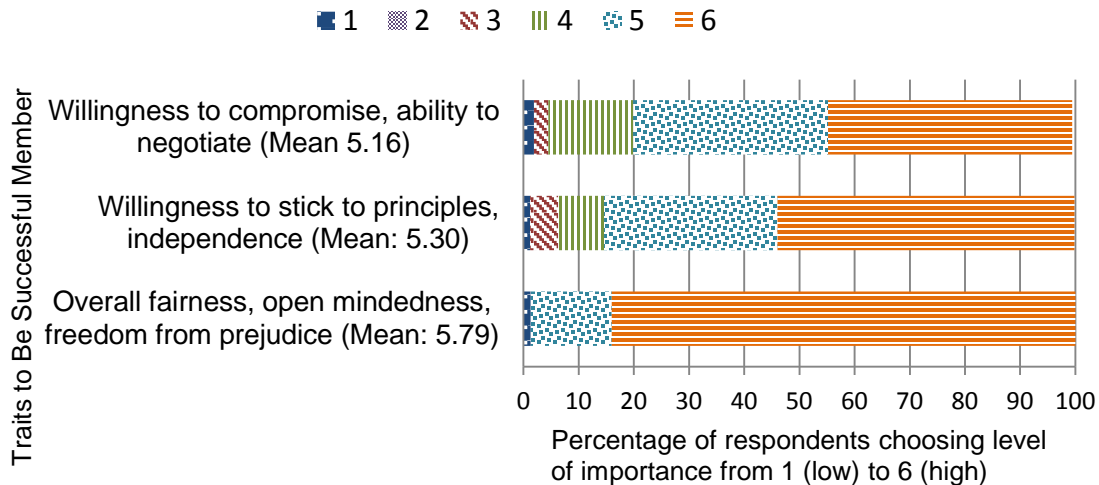
The survey adapted the Alaska Bar Poll list of ideal traits, behavior, skills, and abilities of judicial candidates to assess what participants believed might be an "ideal" member of an adjudicatory board or commission. The list mixes knowledge based skills (for example, expertise or experience in regulated field), behaviors, (such as courtesy, respect to parties and other members), and traits (for example, overall fairness, open-mindedness, freedom from prejudice). Roles and attitudes were defined by endorsement of statements on a 6-point scale from 1 (completely disagree) to 6 (completely agree). Statements were based on prior attitude research in Europe and the U.S.

The Ideal: a Fair, Open-Minded, Courteous, and Impartial Fact-Finder

The level of endorsement of ideals varied considerably, as shown in Tables 4 - 6. These results show what the respondents understand they *should* do to be a successful member of a tribunal. The survey responses show most members espouse an ideal not unlike the popular ideal of a judge – an appropriate ideal for members of "quasi-judicial" bodies. Respondents most strongly endorsed an ideal of overall fairness, open-mindedness and freedom from prejudice; followed by courtesy and respect to parties and other members; impartiality and avoiding conflicts of interest; and, ability to understand and weigh evidence.

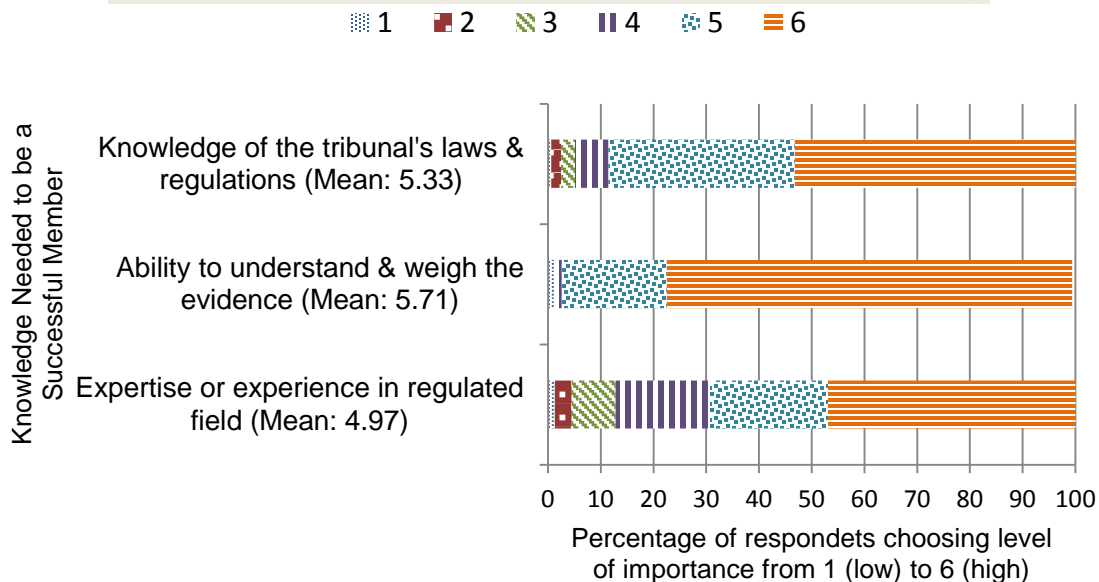
Among general traits, being fair, open-minded, free from prejudice was the most valued. Eighty-four percent of respondents gave “overall fairness, open-mindedness, freedom from prejudice” a “6” score, the highest level of importance.

Table 4. Ideal Trait Importance: Respondents' Ranking

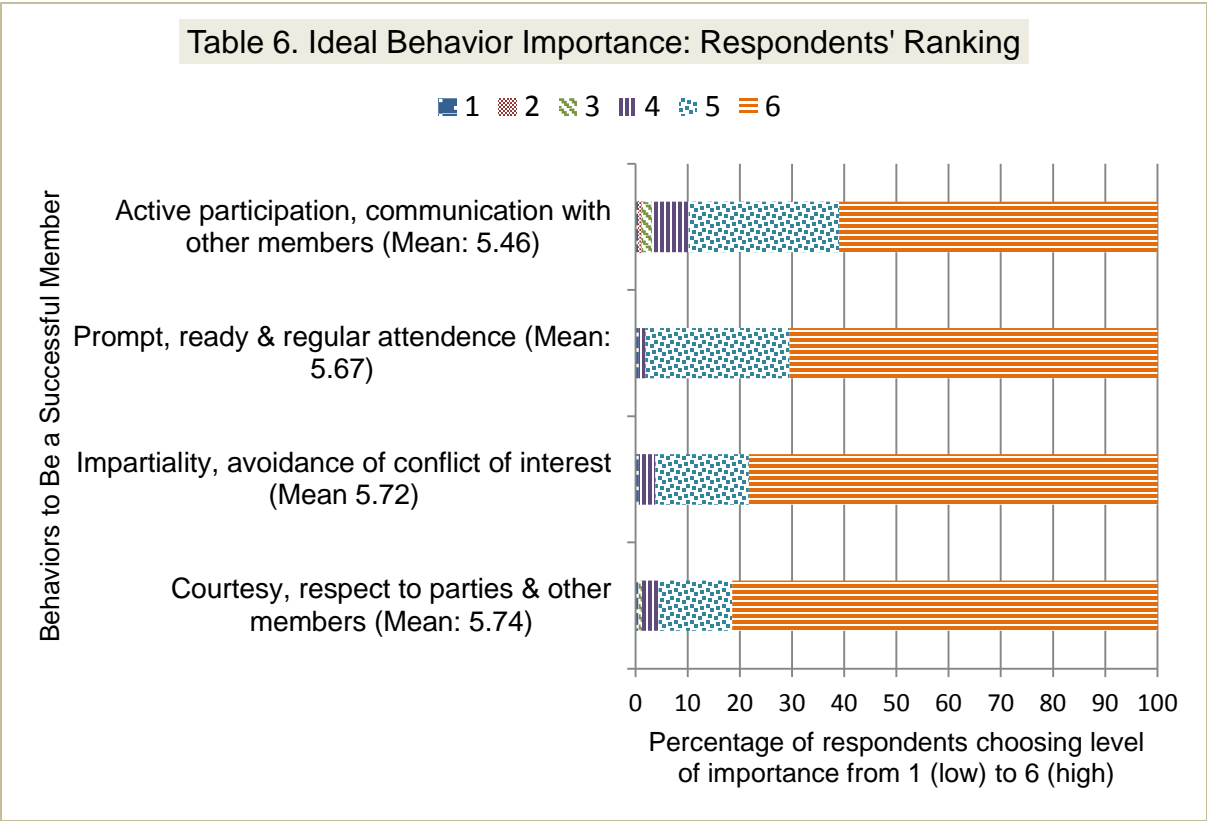


Substantive knowledge of the tribunal’s area of responsibility did not receive a very large percentage of highest rankings. However, ability to understand and weigh the evidence was ranked at the highest level by 77% of respondents, comparable to impartiality and avoidance of conflict of interest (78%).

Table 5. Ideal Knowledge Importance: Respondents' Ranking



Rankings on duties of courtesy, participation, impartiality, and prompt attendance revealed that 81% of respondents gave courtesy and respect for the parties and other members the highest level of importance, more responses than those who gave impartiality and avoiding conflicts of interest the highest importance (78%). Active participation and communication with other members was rated as the highest importance by only 61%, lower than prompt, ready and regular attendance (70.5%).



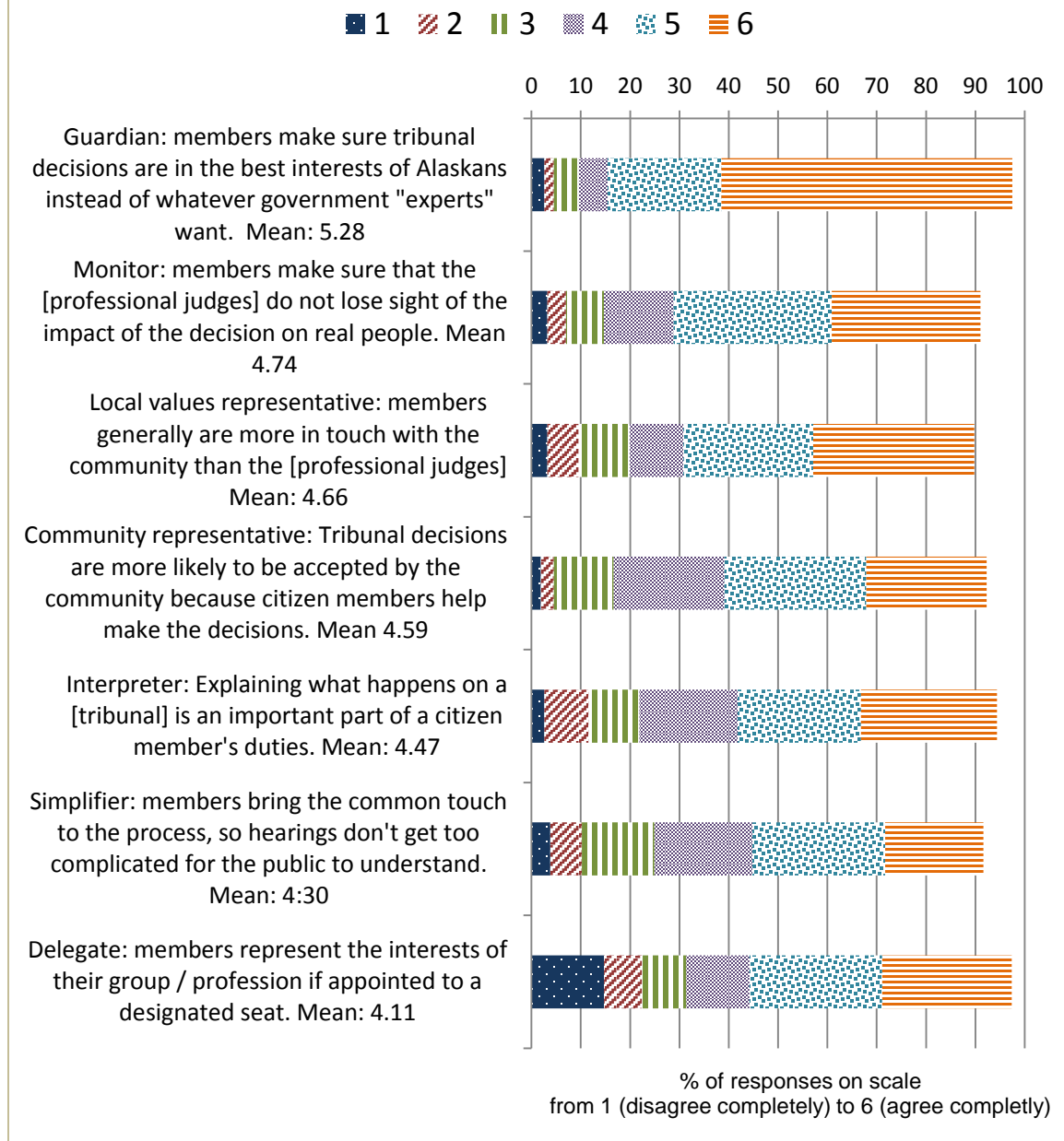
Member Roles

This research gave participants an opportunity to describe their role on a mixed tribunal apart from the formal role described in statute and regulation. Participants were offered statements about latent contribution as members of a tribunal, their active role as decision-makers, and their role in relation to the professional judge. Respondents indicated how much they disagreed or agreed with the statement on a scale from 1 (completely disagree) to 6 (completely agree). In the same way, they were also asked about their attitude toward law, that is, how they thought tribunal decisions should reflect the law.

Latent contributions refer to a member’s indirect impact on the tribunal through another individual’s responses to the member’s presence on the tribunal. The

member's impact is "latent" because it is accomplished by another individual's response. An example of a latent contribution is community acceptance of tribunal decisions because the community sees its members are on the tribunal. The member's contribution is accomplished when the *community* accepts the decision.

Table 7. Lay Members' Latent Contributions:
Respondents' Ranking



As Table 7 shows, the most heavily endorsed "latent" contribution was as a guardian against government over-reaching (Mean score = 5.28, SD 1.186). The statement

describing this role was “Citizen members make sure tribunal decisions are in the best interests of Alaskans, instead of being whatever government ‘experts’ want.”

Arguably this is not a latent contribution, as the member acts as part of the tribunal. However, this function was initially classed as “latent” because it requires action of the tribunal as a whole to be accomplished. The next highest endorsements of latent functions, as a monitor against professional error, (Mean: 4.74, SD 1.308) and local values representative (Mean: 4.66, SD 1.433), lagged a full half-point behind the guardian function. The lowest subscribed latent role was as a delegate representing group or professional interests (Mean score = 4.11, SD 1.77). Clearly, the guardian and monitor functions of lay participation in adjudication are important to Alaskan tribunal members.

Associations between endorsement of particular ideals and role endorsements and attitudes toward the law were explored in this research, using non-parametric statistical methods. The results revealed many small to moderate correlations, too numerous and complex to discuss in detail in this report. However, one result stood out. *Every* latent contribution correlated with an “independent adjudicator” attitude toward law, (“making a just decision is sometimes more important than following the strict letter of the law”). This attitude, reflecting a willingness to rely on personal judgment of what is a “just” outcome over the strict letter of the law, was most strongly correlated with the “monitor against professional error” function, although the effect of the correlation itself was only moderate.^b

In active decision-making roles, the strongest endorsement was given to the “impartial decision-maker,” described as “members should be fair and impartial in deciding cases, regardless of their personal politics or other personal views.” (Mean score = 5.80, SD 5.31). However, responding participants also strongly endorsed another active “monitor/guardian” role (Mean score = 5.74, SD .536; “If a citizen member sees something wrong in a hearing or a decision, the member should speak up so it gets fixed”). Again, respondents were not inclined to endorse the delegate role, either as a group or professional delegate in a designated seat (Mean score 3.04), or as a political delegate (Mean score = 2.74, SD 1.374).

^b The result was ($n=138$, Kendall’s $\tau\text{-}b = .303$, $p = <.001$, Spearman’s $\rho = .360$, $p = .001$). A complete report of the correlation results may be found in the author’s master’s thesis: *Citizen Adjudicators Lay Members of Alaska’s Mixed Administrative Tribunals as Judges in Mixed Courts: A Study of Participation, Attitude and Recruitment*, Knudsen Latta, Kristin S., University of Nevada, Reno, Nevada (2012) ProQuest, UMI Publishing (UMI No. 1522070).

In relation to the professional judge, respondents strongly endorsed members' equal responsibility for making fair decisions (Mean score = 5.32, SD .948). Respondents emphatically rejected the idea that "decisions made by citizen members wastes the State's time and money" (Mean score = 1.45, SD .905).

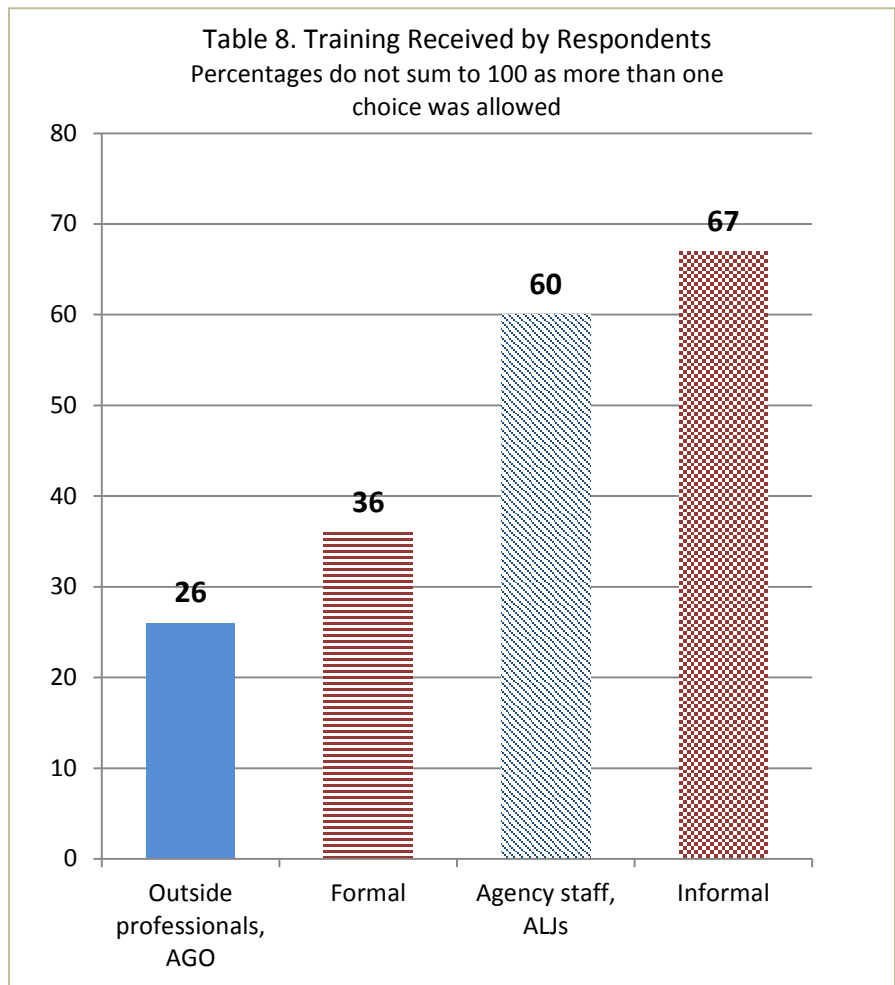
Preparation for appointment

Participants were asked how well prepared new members are for service on the member's board or commission. Only 5% of respondents indicated new members are "very well prepared." About half (51%) indicated new members are "somewhat prepared. Almost equal numbers indicated new members are "not at all prepared" (21%) as were "prepared" (22%). In short, **about three-fourths of the respondents believe new members lack full preparation for their duties.**

Given this response, it was unexpected that **just less than half of respondents (49%) reported receiving training in adjudication, hearing procedure, or decision-making following their appointments.**

Those respondents who did receive such training almost unanimously (97%) agreed the training helped them do a better job on their tribunal.

Participants who had received training were asked about the training provided. The results are shown in Table 8. When provided, training was more often informal than formal, and provided by agency staff, hearing officers, or administrative law judges instead of outside professionals or the attorney general's office.



Desire for training

Participants who did not receive training after their appointment were asked what kind of training they thought would be “most helpful” to them. Only one choice was allowed. Training in the hearing process and decision making was a popular choice, as seen in Table 9.

| Table 9. Respondents’ Choice Of “Most Helpful” Training | % responses |
|---|-------------|
| Training on legal issues, in hearing process, decision making or logic | 50% |
| Training about the history and past decisions of the tribunal | 19.2% |
| Training about techniques: handling unrepresented persons in hearings, hearing safety, and maintaining confidentiality, preserving the record | 15.4% |
| Training about recent advances in the field of tribunal responsibility | 5.1% |
| Other | 10.3% |

Those who chose “Other” were given an opportunity to write a text response. Only two respondents made comments suggesting formal training was unnecessary. Others asked for “*all of the above*,” “*Legal Theory training, meaning of [legal terms]*” “*experience*,” and “*background on current issues of the board, how my role . . . is representing the public and not my colleagues . . .*” Some training in the decision-making process and their legal responsibilities is plainly desired by most respondents.

Participation in Decision-Making

Tribunals decide disputes in different ways. Some tribunals hear evidence in panels with a hearing officer. Some tribunals delegate the taking of evidence to a hearing officer; some delegate the initial decision to the hearing officer. Therefore, it was important to know if the respondents attended hearings to listen to evidence with an administrative law judge or, if they did not, if they attended hearings to listen to argument and review documentary or recorded evidence.

Slightly more than half (52%) of respondents indicated that members of their tribunal attend evidentiary hearings with an administrative law judge. Of those responding “No,” **a number (54%) of participants did not know that they could ask to attend delegated hearings under Alaska law.** Only 5% of responding members of tribunals that delegate evidence-taking to a hearing officer or administrative law judge stated they had asked to attend an evidentiary hearing.

A higher percentage of respondents (63%) indicated they had attended hearings as a member of their tribunal. About 5% of respondents selected unsure as a response, suggesting that some respondents are not clear about what proceedings constitute a

“hearing.” Among the 32% who have not attended hearings, some may be members of purely review tribunals, others may have elected not to attend, and others may be so newly appointed that they have not had the opportunity to attend a hearing. Eighty percent (80%) of respondents reported they had decided a case as a member of their tribunal, suggesting that some of the difference in numbers between those attending “hearings” and those deciding cases includes respondents who decide cases as review panels and respondents who decide cases without attending hearings.

Hearing Participation

Active participation in a hearing was measured by whether the respondent recalled asking questions of witnesses or attorneys *in the last hearing attended*. Among those who attend hearings, 75.5% had asked questions of a witness or attorney during the last hearing they attended. Only 16% asked 10 or more questions; 44% asked 3 or fewer. Three-fourths of respondents reported they had been asked if they had questions during their last hearing. However, there were few (only 3%) who complained that at their last hearing they were unable to ask as many questions as they wished.

Hearing Preparation

Preparing for hearing by reviewing the case file or materials in advance is a way of participating in the decision-making process. As a measure of availability of materials, participants who attend hearings were asked if they “usually” receive a staff memo on the case before a hearing;^c 87% of respondents reported receiving a staff memo before a hearing. Of those attending hearings, 81% report they *always* review the case file or case materials before a hearing. Another 12% report they often review such materials. Of those who at least sometimes review case materials, 47% spend two hours or less reviewing case materials; and about 8.5% spend 10 or more hours reviewing case materials *on average*.

^c The question was phrased in terms of the participant’s general experience. There may be times when a member is a last minute substitute on a panel or weather-related delays prevent members from receiving advance case materials. Another question asked all participants how frequently they received case materials in advance; only 60% reported they *always* received case materials in advance and 27% said they *often* received case materials in advance. Together, this response rate matches the 87% of hearing attendees who *usually* receive staff memos. Nonetheless, a 60% rate of *always* receiving case materials in advance could be improved.

Preparation for hearings was associated with more frequent questioning during hearings and a lower perception of dominance by professional judges during deliberation. Preparation was not associated with a self-report of greater influence of the tribunal. Women members were more likely to “always” prepare for hearing than men. Participants who had lived in Alaska more than 30 years were more likely to spend less time preparing before a hearing and to ask fewer questions in hearings.

Participation in Deliberation

Deliberation, the process of reaching a decision as a body through thoughtful discussion following consideration of the evidence and reflection on the arguments presented, is the key difference between individual and group decision-making. An individual reaches a decision through an interior process, but a group requires frank, free, and civil discussion, sometimes negotiation, and even dissent to reach a decision.

This research could not ask questions about deliberations in any particular case. Instead, questions probed participants’ confidence in their ability and freedom to express opinions during deliberation. The research assumes that a member who freely expresses his or her opinion will occasionally disagree with the professional judge, so participants were asked if they ever disagreed with the professional on an issue in a case, and if they had ever disagreed with the professional judge on the final outcome in a case. Participants were asked how much influence they believed they had on how cases were decided. Finally, participants were asked about the frequency of certain events during deliberation. The results were generally consistent across different forms of questions in this area.

Generally, most respondents did not think that unanimity in decisions was very important (79%), and a majority (53%) did not agree that it was important at all. Most respondents (87%) report they have at least sometimes disagreed with the professional judge on an issue in the case, but a lesser majority of respondents (56%) have at least sometimes disagreed with the professional judge on the final outcome. Thus, it appears that most respondents have wished to dissent from time to time and recognize the value of dissent is important.

As to personal influence, most respondents felt confident that they could influence the outcome of a case at least on a few issues (33%) or often influenced the outcome on particular issues (36%). Only 28% of respondents were willing to claim that they had “more influence than most” or “a lot of influence and often persuade others to join me in the prevailing opinion.” **This suggests that most respondents feel confident enough in the freedom to express opinion to attempt to influence others to their**

point of view, at least on certain issues or some of the time, and may claim some success in the attempt.

Consistent with these results, about 70% of the respondents reported they had never experienced wanting to disagree about a part of a decision, but being unable to do so. Of course, that means that 30% of respondents had that experience at some point, which is troubling. Equally troubling is that only 70% report they always have “ample opportunity to ask questions during deliberation. That means that 30% sometimes have questions that they have been unable to ask during deliberation.

The significance of these results is in the correlations that were found with the perception of tribunal fairness and frequency of opportunities to question and disagree. For example, frequency of an ample opportunity to ask questions in deliberation was positively correlated to greater frequency of asking questions at hearing; but increased frequency of *inability* to express dissent was correlated with fewer questions at hearing. Greater frequency of ample opportunity to ask questions in deliberation was also correlated with higher respondent ratings of the procedural fairness of the respondent’s last proceeding.

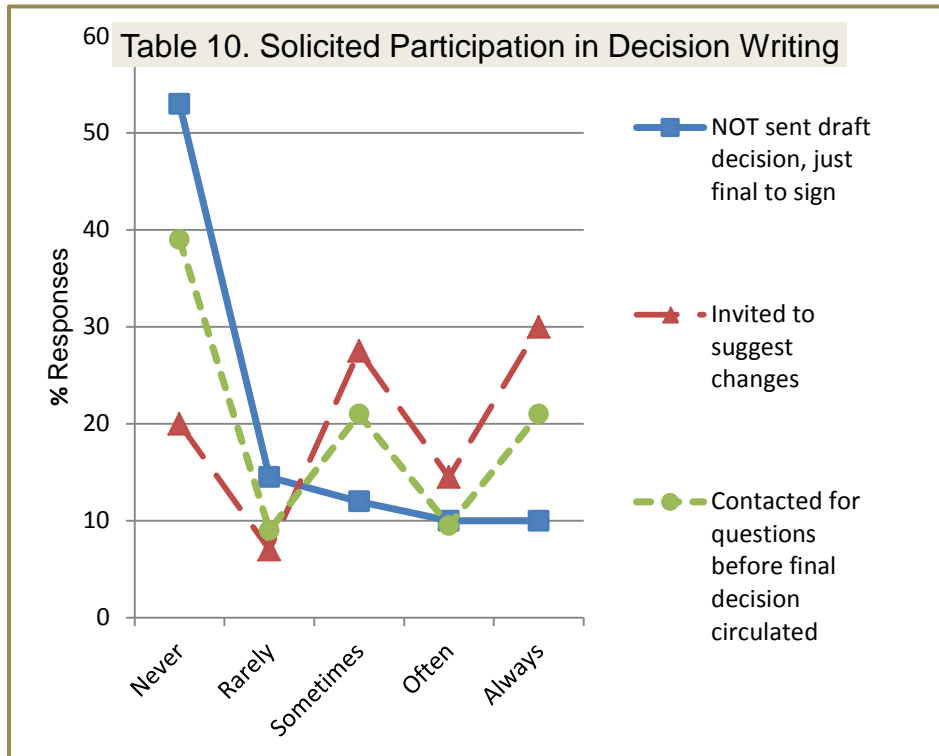
Participation in Decision Writing

In most tribunals, written decisions are prepared by a professional judge. The form of input from the members varies from tribunal to tribunal. While the custom of circulating draft decisions, with a clear invitation to suggest changes, is well-established in some tribunals, it is not a specific statutory or regulatory requirement.

Decisions of quasi-judicial tribunals are published in writing. Alaska law requires that the written decision contain certain elements and reflect reasoned decision-making sufficient to permit appellate review by the courts, *Stephens v. ITT/Felec Services*, 915 P.2d 620 (Alaska 1996). How the decision is written affects the decision’s meaning, impact, and stability. Thus, the right to decide a case necessarily means having opportunity to provide input in the final decisional document. Admittedly, sometimes members may not exercise the right beyond approving a draft without comment, but even that level of participation cannot be achieved if the member does not receive a draft before the final decision is issued.

Participants were asked different questions about the frequency that their participation in the decision drafting process was solicited. One of the questions was phrased in the negative. The responses are presented in Table 10.

Ideally, Table 10 should illustrate a “U” shape, with the blue squares descending sharply from a high on the left and with the red triangles and green dots ascending



sharply on the right, and all lines meeting with their lowest value above zero at the “Sometimes” midpoint.

The blue squares line comes closest to the ideal. Slightly less than half of responding

participants (47%) reported experiencing **not** receiving a draft document and values descend sharply from that point. Nonetheless, the line extends above zero past the midpoint, reflecting that 20% of the total respondents *often or always* were sent *only* a final decision to sign.^d Although slightly more than half of respondents reported they always received a draft decision, only 30% of respondents reported they *always* received an invitation to make suggestions to change the language or wording of a draft decision (represented by the right end of the red triangle). Again, 20% of total respondents reported they had *never* been invited to suggest changes, and 35% only sometimes or rarely received such invitations.

An even lower percentage of respondents, only 21%, reported they are *always* contacted by the decision writer to ask if they had any more questions before the final written decision was circulated; 39% reported they had *never* been so contacted. Thus, while 53% of members report always receiving drafts instead of just a final decision, only 30% always are invited to suggest changes, and only 21% are contacted to see if they have last minute questions.

^d Some tribunals issue form orders that are not final decisions. This discussion does not concern such orders, only the “final decision” containing the tribunals reasoning for its decision.

What is the impact of not being solicited to contribute to the written decision? First, most members perceive that opportunities to participate in the writing of decisions diminish after deliberation ends. While a majority rarely or never experience not receiving a draft decision document, only a minority are regularly invited to make language suggestions or contacted for questions. This means that the nuances, tone, and possible elaboration or explanation of the decision rest in the hands of the decision author, usually the professional judge. Second, the lack of opportunity to contribute to the written decision has an impact beyond the actual wording of the decision. Not receiving a draft to review was correlated with lay members giving lower estimations of the procedural fairness of the tribunal and with a greater sense of suppression of lay member dissent. Low rates of *not* receiving drafts (i.e., receiving drafts more frequently) were correlated with greater frequency of reviewing case files. Being contacted before final circulation was correlated with a greater confidence in member influence in deliberation. In short, **soliciting input in the written decision likely increases member participation in other ways; failure to solicit input is associated with members having negative views of the fairness of the tribunal.**

Barriers to Participation

Travel, time, and facilities were considered as possible barriers to participation. Travel is certainly a frequent experience; 85% of respondents reported having traveled by commercial airline or charter flight to attend a meeting or hearing of their board or commission within the past two years. Travel did not commonly interrupt attendance at hearings; 72% reported that problems with air travel had never made it impossible to attend a hearing or deliberation, and a further 18% had experienced such problems rarely. Late payment of travel expenses or per diem was not widely experienced; 55% of respondents reported this had never happened and 19% reported it was a rare occurrence. However, there was a strong correlation between frequency of experiencing late payment of per diem or expenses and inability to attend due to air travel problems. This may be due to the difficulties of processing payments to or from remoter communities.

Video conferencing does not appear to be widely adopted as a means of overcoming distance-related barriers to participation. Only 18% of respondents often or always were able to participate in a meeting or hearing successfully by video conference link from their home community, and a majority (55.5%) had never done so.

Time allowed for deliberation was more unevenly provided. A small majority (52%) reported they *never* lacked adequate time in the schedule to reach a decision carefully or completely, and 30% indicated lack of adequate time was a *rare* occurrence. However, 18% of respondents indicated that lack of time in the schedule for a careful

or complete decision occurred at least sometimes. Consistent with these results, most respondents (70%) indicated they always had ample opportunity to ask questions in deliberation, and 17% reported it was often the case, but a small minority 13% felt they only sometimes, rarely or never had “ample” opportunity to ask questions in deliberation. **Low frequency of ample opportunity to ask questions in deliberation correlated with lower impressions of the procedural fairness of the proceedings *and* the substantive fairness of the outcome, and a decreased score in overall satisfaction with the tribunal experience.^e**

Most respondents (63%) did not find the facilities for hearing or deliberation were substandard, too small, uncomfortable, or dirty. About a fifth of respondents (19%) reported the facilities were at least sometimes inadequate. Less than one-third (32%) reported they were always provided private space to meet and discuss matters before and after hearings, and fully one-third had never been provided private space for discussion outside the hearing room. An increased frequency of inadequate facilities was correlated with a decreased score on the degree new members are prepared for service on the tribunal, suggesting some respondents were unprepared for the utilitarian, multi-purpose facilities provided to most state boards and commissions.

In terms of other support, a majority (60%) reported they always received copies of case materials in advance. Respondents who always received case materials in advance were more likely to report that during deliberation, the professional judge talked as much or no more than the average lay member, suggesting that these respondents did not feel intimidated by the expertise of the professional judge during deliberations because they had reliable opportunity to prepare for deliberations.

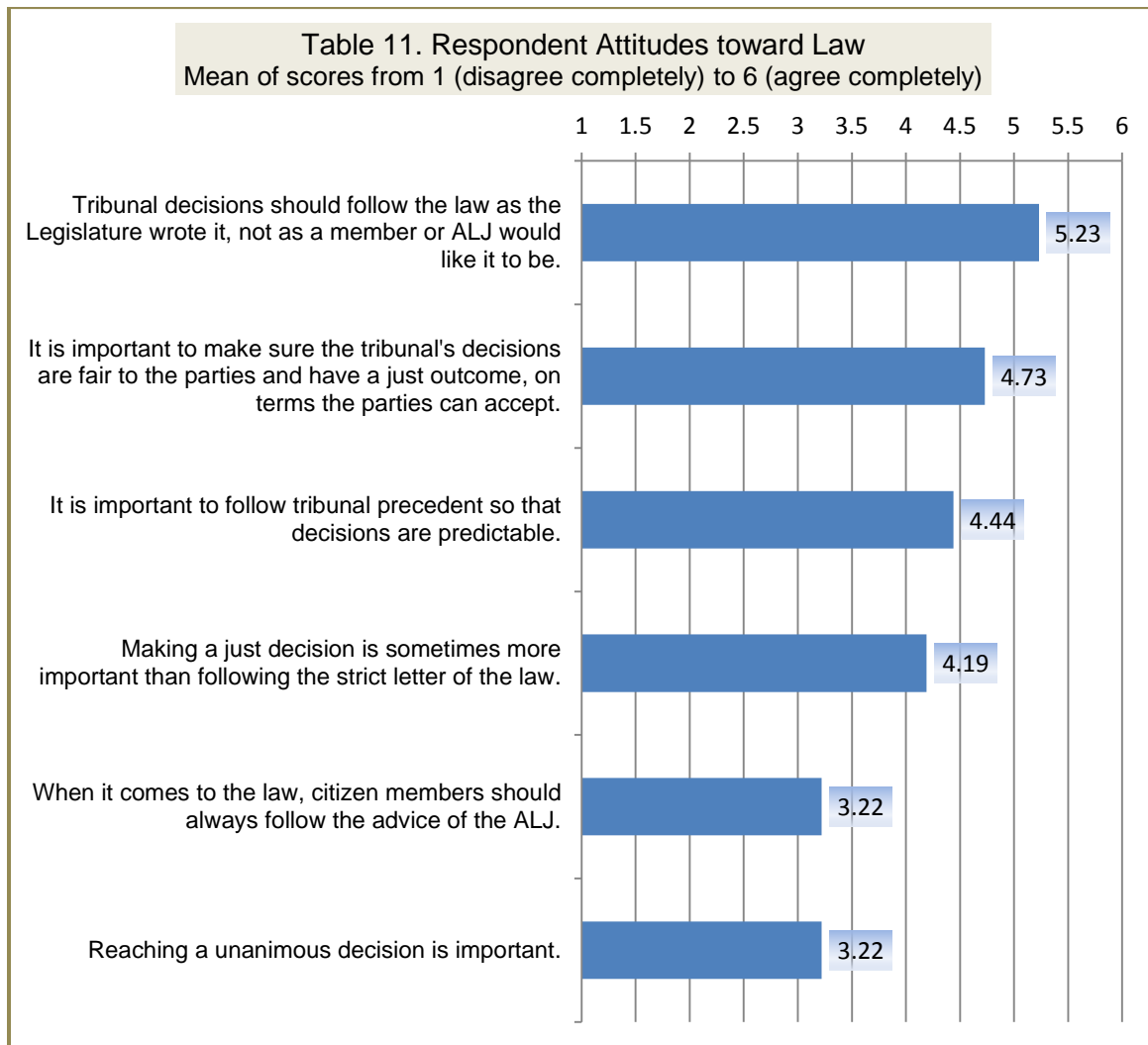
Respondent Attitudes toward Law

Member attitudes toward law were explored because few studies have asked lay members of administrative bodies what sort of “judicial” attitudes they have toward the law. No questions asked respondents “how would you decide such and such a case?” Instead, respondents indicated a level of disagreement to agreement on a 6

^e The correlations drawn in the study do not support an inference that the participants’ tribunals reached decisions that were unfair to the *parties* as a matter of law in any particular case before any particular tribunal. The study asked only about the participants’ *perceptions* of the tribunal on which they sat; it did not ask questions about the specific case decided or specific actions they believed were unfair. The study design makes it impossible to determine how legally accurate a respondent’s perception may be.

point scale with general statements drawn from studies of judicial attitudes. Very few respondents checked “no opinion” on these questions.

As a general rule, respondents tended to adopt a “legislative-constrained” view of the law. The strong sense of being constrained by statutory law did not carry over to willingness to always follow the professional judge’s advice on the law. Respondents also often agreed with statements reflecting a pragmatic search for an outcome that is just, fair, and acceptable to the parties, respect for tribunal precedent, or willingness to exercise independent judgment of what is “just.”



Caution should be exercised regarding this information on attitude. These are general statements, outside the context of particular case facts. Endorsement of a particular view of law in general is in no way predictive of how a respondent – or lay members in general – might rule in a given case. While some attitudes richly correlated with particular roles or ideals, none of the correlations found were especially strong.

Therefore, attitudes about law should not be viewed as predicting behavior on a tribunal. The importance of these results lies in the general strength of the respondents' view that they are constrained to follow the law "as the Legislature wrote it" and the relative weakness of a "group-defined" attitude. In short, the results of this survey demonstrate that **generally respondents think rationally and individually about the law when making decisions** and are less inclined to believe they must "go along to get along."

Recruitment

Recruitment questions concerned the initial contact, the reason for applying for an appointment, the reasons for volunteering for a second term, the application process, and the participants' sense of how well the recruiting process works to identify well-qualified tribunal members.

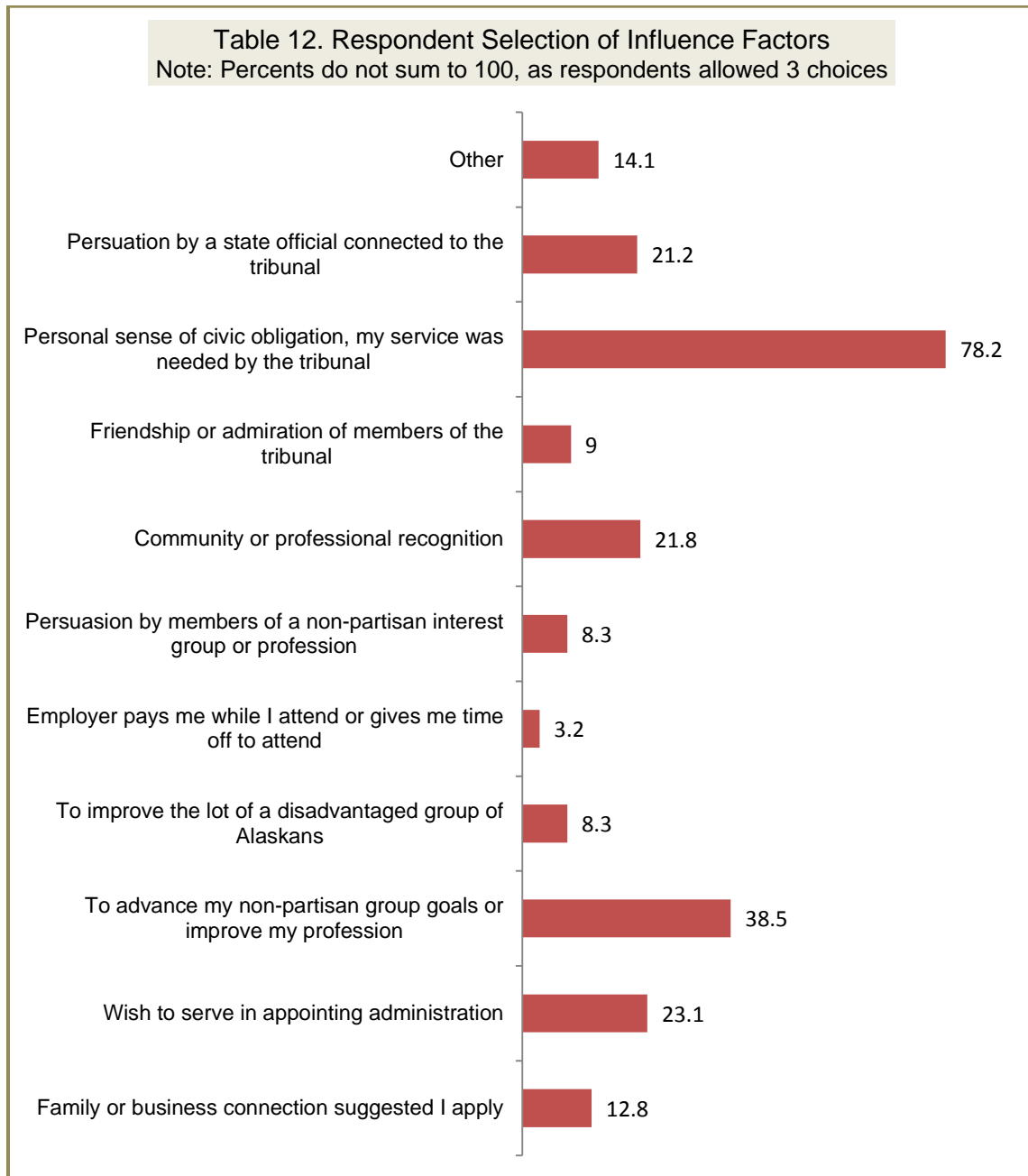
Initial contact (first learning of a vacancy at a tribunal) was usually through a fellow professional, union, or other non-partisan group member (35%) or a state employee or tribunal member (33%). Only 6.4% of respondents first learned of the vacancy on the Boards and Commissions website, which is disappointing given the state's effort to publicize the website. More respondents (13.5%) chose "political party member, party officer, or legislator" as an initial contact. About 13% selected "other" as a response; some "other" responses included "Employer asked me," "asked by the Governor," "newspaper," and "university." Some of the "other" responses duplicated choices offered: "representative for our area," "by my profession," or "on state agency website." The Governor's Office accounted for 25% of the "other" responses; if these are added to the "political" selections, the total of political initial contacts is 17% of responses. No statistically significant associations were found between participation and the source of initial contact.

Reasons to Apply

The respondents' choices of their "top three" factors influencing their decisions to apply for a vacancy are presented in Table 12. Not all respondents chose three items and choices were not ranked by the respondents. Those who selected "other" were given an opportunity to provide an explanation.

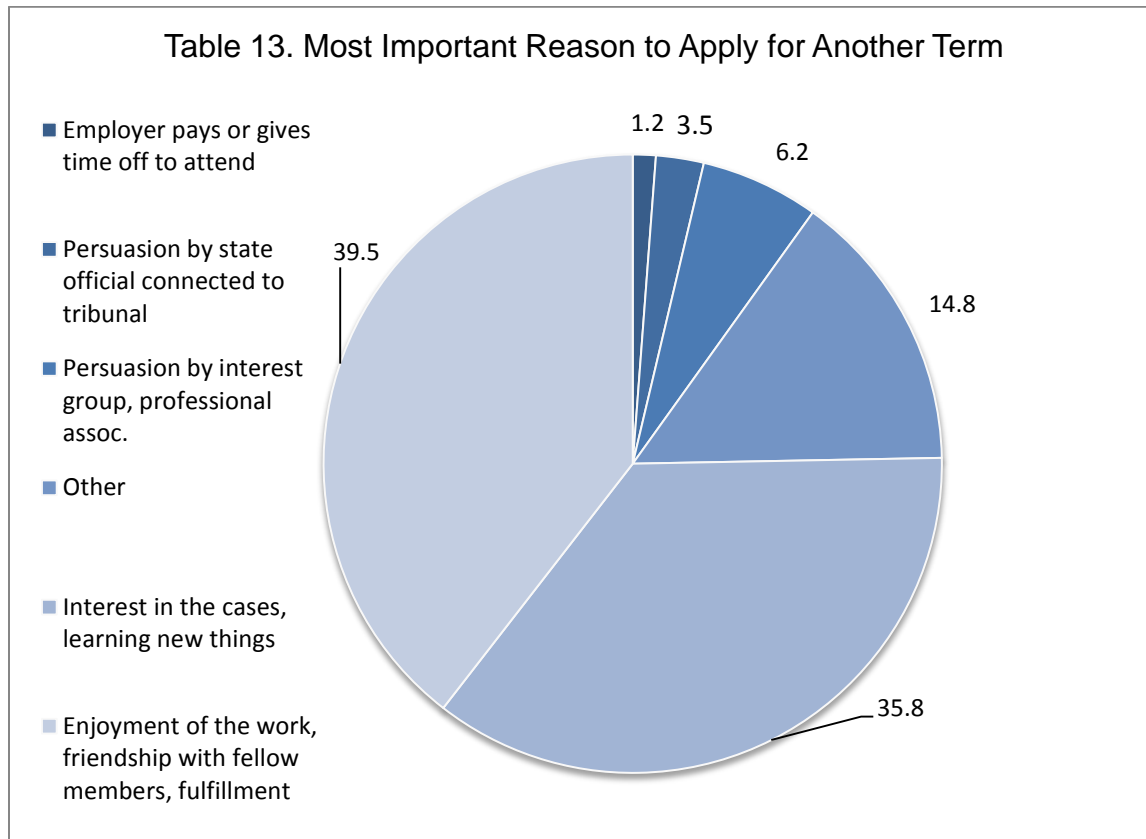
Some of the reasons provided by respondents included "curiosity," "new experience," "observed need for objective citizen participation," "wish to keep skill level up." After excluding the most common altruistic response (personal sense of civic obligation, my service was needed), the remaining reasons for applying were collapsed into very general categories of persuasion, civic improvement, political recognition, and self-interest in professional improvement. Among these collapsed

choices, political recognition (in administration, community or profession) was the most frequent choice.



A small majority of respondents (52%) reported serving more than one term. These respondents were asked to select the most important factor in the decision to volunteer for another term. The results are presented in Table 13. Text responses to

“other” were generally altruistic, for example recognizing a lack of experience or knowledge in other members or commitment to agency. However, some respondents stated they did not volunteer – suggesting they had been left “holding over” in the position beyond their term without applying for another term.



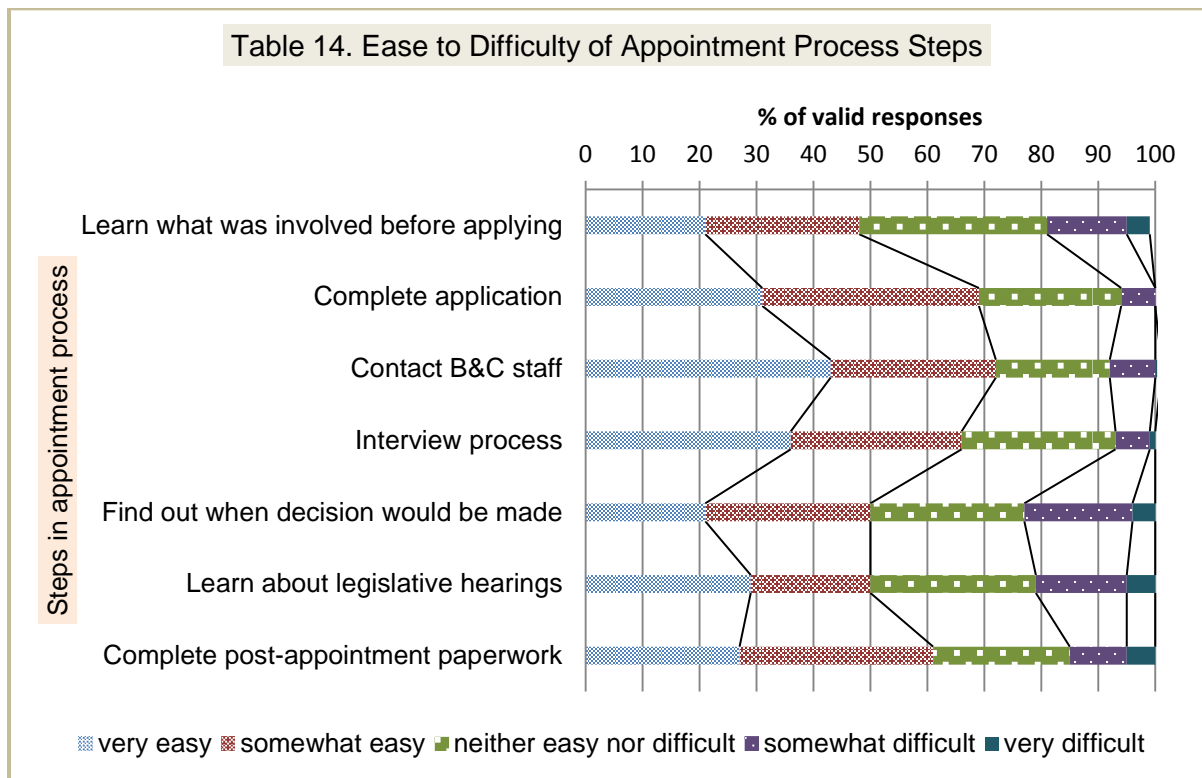
Women more frequently cited an intellectual reason, “interest in the cases, learning new things,” as the most important reason to apply for another term, while men more frequently cited a social reason, “enjoyment of the work, friendship with fellow members.” Perhaps emphasis on the intellectual challenges of service on boards and commissions may attract more women to apply for vacancies. Not surprisingly, re-enlistment for social reasons or persuasion by a state official connected to the tribunal was associated with a lower frequency of disagreement with the professional judge.

Application Process

About one-third (32%) of respondents used the Boards and Commissions website to obtain information on their vacancies. An even lower percentage (18%) used the website to apply for their vacancy online. Evidently, paper continues to be the major avenue of applications.

This study did not compare completion rates and timeliness between paper applications and online applications. If a primary goal of the online application is to increase the time Boards and Commission staff have to review complete applications before selection and submission to the legislature, such a comparison would be useful before requiring online submission of all applications. Theoretically, online submissions could reduce opportunity for delay, however, effectiveness would depend on the availability of staff to review applications and do follow up.

Ease of application and the process of appointment were measured by a series of items asking for responses on a 5-point scale from “Very Easy” to “Very Difficult.” No item achieved more than 50% of “Very Easy” scores and no item reached a double digit percentage of “Very Difficult” scores, as seen in Table 14.



While contacting the Boards and Commission staff was rated as the easiest part of the appointment process by most respondents, finding out when a decision would be made on an appointment is probably a point of frustration for individuals applying to vacancies.

When asked how successful the application process was in **identifying well-qualified appointees**, the respondents tended to moderate responses, with 50% agreeing it was “successful” and almost equal numbers on either side indicating it was “very successful” (24%) or somewhat successful (22%); only 3% indicated it was not at all

successful. This result suggests most respondents were satisfied with the process of soliciting, reviewing and confirming applicants for member positions and most respondents are satisfied that they, and other appointees, are well-qualified for their positions.

Recruitment matters

One goal of this research was to explore the relationship between method of recruitment and member satisfaction. In some respects, a lack of results was reassuring because it showed that using non-traditional recruitment was unlikely to adversely affect satisfaction. For example, no correlation was found between website use for first contact or application and general satisfaction levels. Only one correlation was seen between participation levels and the recruitment and application process: those who found it “very easy” or “easy” to discover when a decision would be made about the appointment to the tribunal were more likely to “always” review case materials before hearing.

However, small to moderate correlations were found between difficulty of recruitment *at all points* and two measures of satisfaction: success of the application process in identifying well-qualified appointees and satisfaction with how well-prepared new appointees are for service on the tribunal. The greater the difficulty at any point in the application process, the lower the degree of satisfaction. The strongest correlation in both cases was with learning what was involved in the appointment before applying. The results suggest that if a prospective appointee experiences difficulty learning what the appointment involves *before applying* (i.e., making a commitment to the position), the appointee is more likely to believe he or she is unprepared for service, and that the application process itself is flawed.

In addition, difficulty learning what an appointment involves before applying and difficulty contacting Boards and Commissions staff were both associated with a lower estimation of the honor of being chosen for appointment. It may be that the appointment is seen less an honor because respondents did not realize how much of their work would be involved in receiving an appointment. Similar feelings may be reflected in the correlation between greater difficulty completing post-appointment paperwork and a diminished sense of importance of tribunal service to improving life in Alaska.

Two other correlations are particularly relevant to recruitment. A small correlation was found between selection of recruitment influence factor “desire to advance my non-partisan interest group goals or improve the practice of my profession” and a lack of satisfaction with the representativeness of the tribunal. A small correlation was

seen between selection of “Desire to improve the lot of disadvantaged Alaskans” and lower feelings of importance of service on the tribunal. These results suggest that there is **some disappointment in the respondents’ ability to accomplish goals through the appointment to a state tribunal**. However, application motivated by a “Desire to improve the lot of disadvantaged Alaskans” was also associated with greater confidence in deliberation, that is, a sense of being able to influence other members. In other words, disappointment in the ability to accomplish the goal of improving the life for disadvantaged Alaskans did not appear to be associated with being excluded from decision-making.

Finally, being persuaded to apply for a second term by a non-partisan interest or professional group was associated with areas of concern for recruitment. Such respondents were less likely to believe they had “ample opportunity to ask questions during deliberation.” Respondents who had been persuaded to “re-enlist” for a second term by an interest group or profession were particularly sensitive to negative experiences. Their mean scores were higher than average on the observation of staff disrespect, feelings of exclusion, and attorney disregard. This is significant because no such correlations were found based on *initial* recruitment by interest groups or professional associations. Interest and professional groups share the same difficulties that government does of finding qualified nominees. Understandably, the result is pressure on incumbent members to “re-enlist” when the group has no replacement to propose. Care should be taken that retained members are not persuaded to undertake a second term they do not want; retention in these circumstances may have negative consequences for the tribunal.

Member Satisfaction

Member satisfaction was explored in different contexts. General satisfaction was explored through questions on pleasure or pride in service and overall satisfaction. Other questions explored satisfaction with specific aspects of satisfaction with the tribunal: diversity of the tribunal, the tribunal’s fairness, and the respect accorded their service. Finally, participants were asked if they had experienced specific events.

One important finding of this research was that there was no statistically significant difference in respondent satisfaction, by any measure, across types of tribunals or decision-making methods. The necessity for travel also did not impact satisfaction by any measure. It was interesting to note a correlation between residence in a town of thirty to sixty thousand inhabitants and a greater sense of the importance of tribunal service to improving life in Alaska.

The following questions were asked to measure general satisfaction:

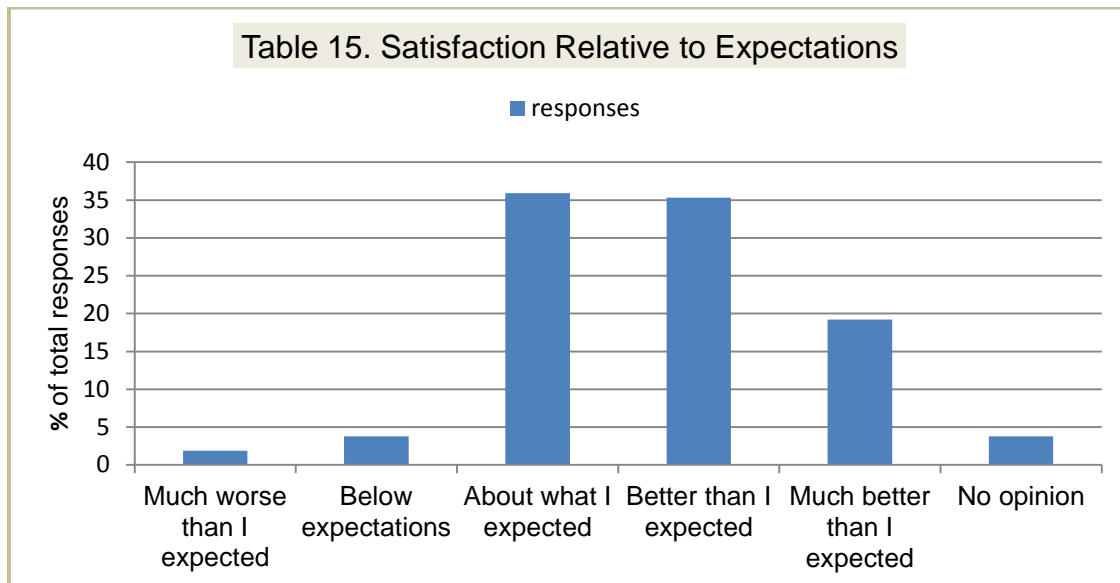
- ❖ How much do you agree on a scale of 1 to 6 . . . with the following statement? “It is an honor to be chosen to serve on a board or commission.”
- ❖ How important do you feel service on your board or commission is to improving life in Alaska?
- ❖ People usually have expectations that come with them when they are appointed to a board or commission. Overall, how would you rate your experience as a citizen member in relation to your initial expectations?

The following questions addressed specific aspects of satisfaction with the tribunal:

- ❖ In general, how representative do you think your board or commission is of Alaska’s population?
- ❖ Thinking about the last case you decided, how just and impartial was the hearing and decision-making process?
- ❖ How fair was the outcome of the last decision you made with your tribunal?
- ❖ On a scale of 1 to 6 . . . how much do you agree with [this] statement?
“Citizen members should be given more respect than they are now.”

General Satisfaction

The results across “pleasure and pride in service” measures were generally positive. Most respondents (64%) agreed completely that “it is an honor to be chosen to serve on a board or commission.” (Mean: 5.38, SD 1.057). Most respondents (56%) felt

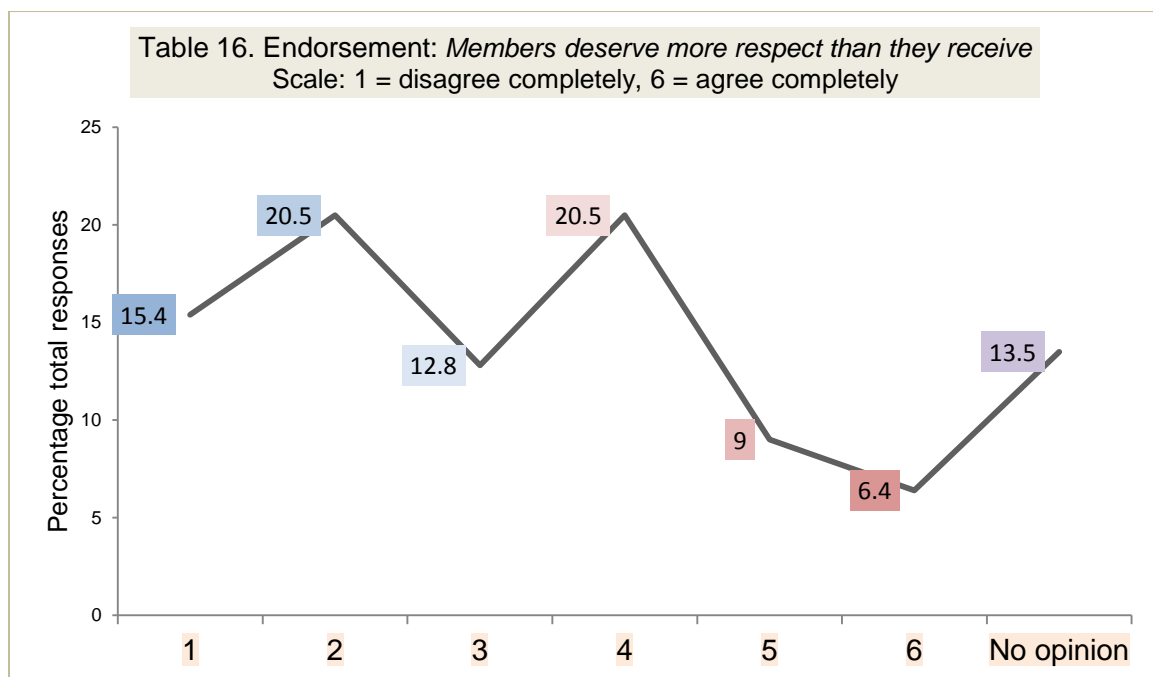


their service was “very important” to improving life in Alaska, only 8% felt it was less than important. However, when satisfaction was measured relative to expectations, results were less enthusiastic although generally positive, as seen in Table 15.

Satisfaction with the Tribunal

Respondent satisfaction with the representativeness of the tribunal was measured by asking members to choose a descriptive phrase rather than a numerical rating. Also, some tribunals are so small that they cannot possibly reflect the full diversity of Alaska’s population. The results show that most respondents (59%) believed that the “membership represents the diversity of Alaska’s population, given the size of the [tribunal]”. Only 8% of respondents indicated their tribunal “lacks both ethnic and gender diversity;” 13.5 % indicated their tribunal “lacks either ethnic or gender diversity,” and “14% selected “It has some ethnic and gender diversity, but could be more diverse, given the size of the commission.”

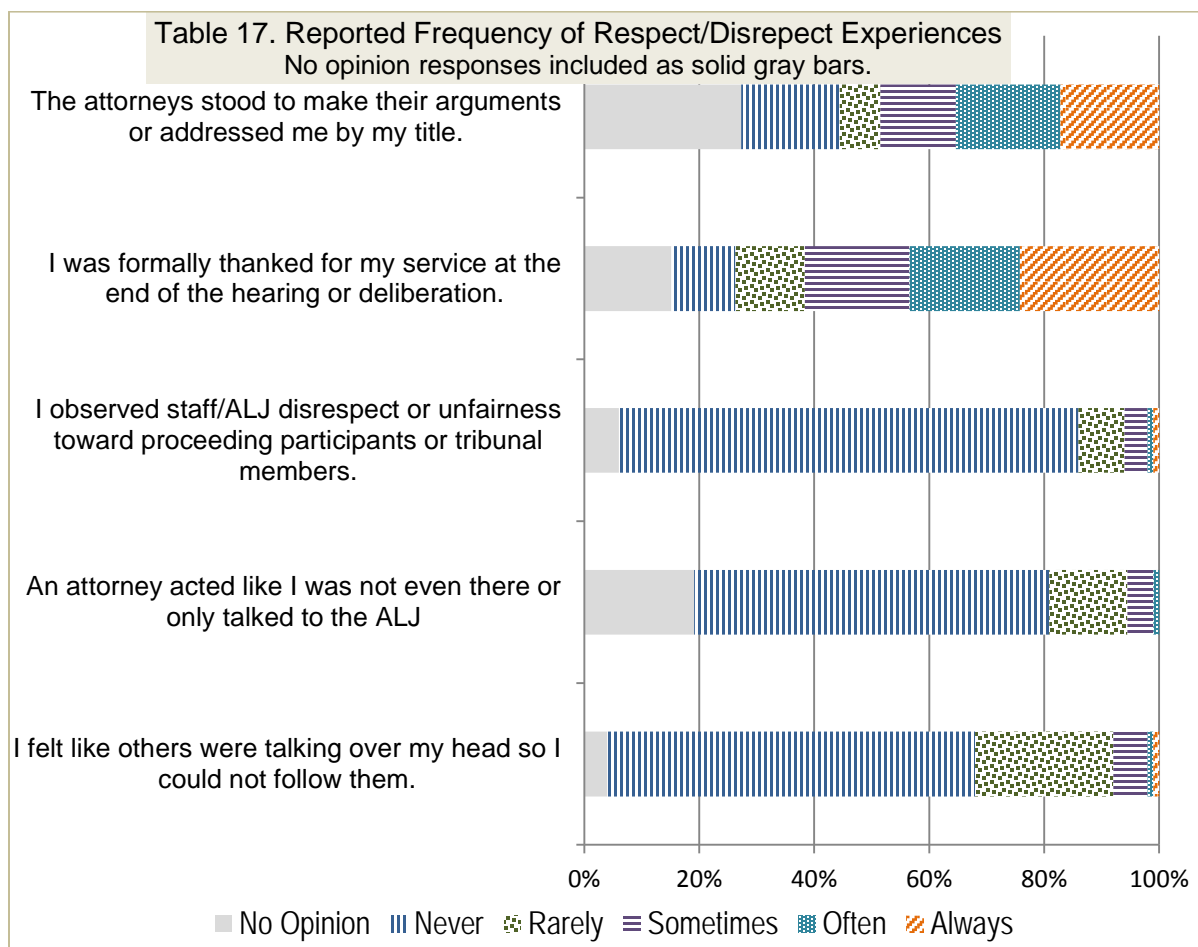
Most respondents (57%) did not agree members deserved more respect, but the responses were not an overwhelming rejection of the idea, as the chart below shows. Slightly more than one third agreed to some extent that members of tribunals deserve more respect than they are presently given, 12.8% indicated a weak “disagree” and 13.5% preferred not to express an opinion – one of the higher levels of “no opinion” response in the survey. These results suggest that many, but not most, respondents are uncomfortable with the way members of tribunals are treated.



However, the overwhelming majority of respondents viewed their tribunals as producing fair decisions; 89% of respondents rated the *outcome* of the last decision they made with their tribunal as “very fair,” 9% as “somewhat fair” and only 2% as “not very fair” or “not at all fair.” Outcome fairness is also called “substantive fairness.” A similar majority (86%) rated the hearing and decision-making process (“procedural fairness”) in their last decision as “very just and impartial.” No one responded “not very” or “not at all” just and impartial, but 14% rated the procedural fairness of their last decision as “somewhat just and impartial.”

Experience of Tribunal Culture

Respondents were asked how frequently they experienced a number of events, some of which have already been presented in this report. This section presents those negative and positive experiences that reflect a culture of respect or disrespect for the tribunal or its members. Table 17 illustrates the frequency respondents reported they experienced the listed events. “No opinion” responses were quite high to some statements, so these responses are also included in Table 17.



While 79.5% of *all respondents* (85.5% of those responding to the question) have *never* observed staff or ALJ disrespect, at least 14.5% of those responding to the question have *at least rarely observed* disrespect and about 7% abstained from expressing an opinion. Respondents generally feel respected by attorneys in the hearing room. They perceive that attorneys usually do not ignore members (76% never have been ignored by an attorney, 17% only rarely), but 7% of respondents have experienced this form of disrespect more frequently than rarely. A full 19% of the total expressed no opinion, possibly because a number of respondents have not attended live hearings or argument by attorneys. Similarly, it is encouraging that most respondents (66% of those responding to the question) have never felt excluded from a discussion in deliberation, a minority (25%) has rarely experienced exclusion, and only 9% of respondents have experienced exclusion more than rarely.

While the general infrequency of overt disrespect is reassuring, the relative rarity of gestures of formal respect is not. Only 29% of respondents answering the question stated they were *always thanked* formally at the close of hearing or deliberation, and 27% of respondents had *rarely or never been thanked* formally. The unusual percentage (15%) of respondents who expressed no opinion could reflect those respondents who have not attended a hearing or deliberation or who are confused about whether a meeting to decide a case constitutes a “deliberation.” Even fewer respondents (17%) reported that attorneys *always stand to make arguments or address them by their title*. Administrative hearings are often relatively informal, so some responses could reflect a practice of remaining seated; however, even in informal settings tribunal members should be addressed by title. Again, the high percentage of “no opinion” responses (27%) could reflect those who have not participated in evidentiary hearings as well as new appointees.

Consistently negative correlations appeared between satisfaction measures, particularly general satisfaction and pride in service, and experiences of public disrespect, ranging from moderate to small. This is not surprising, as treatment with dignity and respect is one of the primary elements that contribute to our assessment of the fairness of a proceeding. Contributions to the public good, such as engaging fully in the duties of a tribunal member, are “strongly influenced by the degree of respect received, especially when group members did not feel included.”^f Negative experiences affect the ability of the member to contribute to the decision-making

^f David deCremer & Tom R. Tyler, *Am I Respected or Not?: Inclusion and Reputation as Issues in Group Membership*, 18:2 Soc. Just. Res. 121, 149 (2005), doi: 10.1007/s11211-00507366-3.

process and those reflecting disrespect have greater power to affect the member's assessment of the substantive and procedural fairness of the tribunal than positive experiences. Disrespect does not help to induce cooperation among members. Agreement on matters of substance is simply not always possible or even desirable; but a culture of respect will make room for measured dissent and agreement on procedural fairness.

Maintaining the Strengths of Alaska's Mixed Tribunals

This study did not examine the pros and cons of mixed tribunals as a form of citizen-based decision-making in the adjudicatory context. Instead, it tried to determine if a particular tribunal structure was associated with greater member participation, confidence, or satisfaction. The findings of this study suggest that no particular mixed tribunal form of Alaska's adjudicatory boards and commissions suffers from flaws attributable to organization or inherent structure as a mixed tribunal. Nothing in this study suggests that administrative adjudication in the state of Alaska would benefit by reducing the number or types of adjudicatory boards and commissions.

The survey results show members of Alaska's boards and commissions have generally adopted a "judicial" attitude toward decision-making appropriate to their quasi-judicial role, despite a lack of legal training. Most reject the role as a representative of particular interests or political delegates and 98% agree that their personal politics and views should be set aside when making decisions. They want to reach just, fair decisions within the bounds of the law. They see themselves as fact-finders, mediators, experts, pragmatists, and independent, fair and impartial decision-makers – not as deputies of an appointing agency. This study does not suggest that many members of Alaska's boards and commissions suffer from the phenomenon of "agency capture," that is, that their adjudicatory decisions are heavily influenced by the industries or professions most directly affected by the decision outcome. **In terms of member adoption of values associated with fair, impartial and independent decision-making and respect for statutory law, Alaska's administrative tribunals are quite strong.**

However, a few improvements could be made in tribunal practices. Respondent satisfaction and estimates of the procedural fairness of the respondent's last decision were positively associated with ample opportunity to ask questions during deliberation. But satisfaction, procedural fairness, and substantive fairness were negatively associated with suppression of dissent and inadequacy of time to deliberate carefully and completely. Allowing sufficient time in the schedule for deliberation and repeated solicitation of member questions on points of debate could improve the

member satisfaction and perception of tribunal fairness. This may mean that more conferences are required – and less “vote by e-mail” – on reaching initial decisions.

The deleterious effect of suppression of disagreement suggests that formalizing the right to express dissent in a decision may be required on some tribunals. Clarification of member rights to attend hearings subject to the chief administrative law judge’s discretion may promote participation at all levels, even if members do not often take advantage of the opportunity. Finally, rules concerning respectful conduct (addressing members by title, standing to argue by attorneys) in the hearing and deliberative process could be more widely enforced.

Consistent training of all board and commission members is an obvious need. Informal training from agency staff leaves open the possibility that some staff may skim over difficult aspects of training. Agency staffs that appear before tribunals, or who must present cases for adjudication, are placed in a difficult position when asked to train tribunal members. Training, especially for chairs of boards and commissions, in methods of legal deliberation in collegial bodies and the responsibilities in leading fair deliberations would alleviate some of the complaints about suppression of dissent, exclusion, and inadequate opportunity to deliberate.

The demographic data of respondents suggests that recruitment needs to be broadened for adjudicatory tribunals. Admittedly this is a difficult proposition. Boards and Commissions has made commendable efforts to recruit through the state’s website, but the low use of the website as an “initial contact” is disappointing. Most first contacts remain regulated industry interest groups, state employees, and other tribunal members. State-generated publicity is generally limited to press announcements of appointments. Perhaps extending wider public recognition to current members or the adjudicatory work of tribunals may help by elevating the importance of tribunal service in the broader community, as well as publicizing the existence of tribunals as opportunities to serve the state in a “quasi-judicial” capacity.

Many members found it difficult to find out what an appointment involves and this difficulty is associated with lower satisfaction. Websites are not the only answer to this problem and information must be generally applicable, but the appointment process information on the Boards and Commissions website could be improved by including a few more concrete details. For example, the website contains the following information:

- You may apply to more than one board or commission. Your application will remain open if you are not appointed to a board or commission.
- Your application is a public record.

This information would be more concrete if it included how long the application remained open and how long an *unsuccessful* application remained in the public record.

Like the information on the appointment process, the on-line application is quite general. Here it may be necessary to distinguish applications for policy-making and advisory boards from those that adjudicate specific rights and claims so that more directed information can be given and obtained on applications.

Resolving difficulties in knowing when a decision would be made on appointments and learning about legislative hearings requires coordination with the Legislature, as these are dependent on the requirement for legislative confirmation of appointments. Some uniformity in guidance, or direction of inquiries to a single Legislative office after submission of nominees to the Legislature, would be very helpful to reducing difficulty in this area.

Future research in this area will be facilitated by the deposit of the author's research data, stripped of all identifying information, at the University of Alaska Anchorage Justice Center's Statistical Analysis Center. The original survey data, including names and addresses of participants contacted for the survey, continues to be preserved confidentially and securely at the University of Nevada Reno Center for Research Design and Analysis, in accord with the University's Office of Human Research guidelines.

Copies of this report may be obtained by contacting the Justice Center by telephone at (907) 786-1810 or by e-mail to uaa_justice@uaa.alaska.edu.

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